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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,039	01/16/2004	Zbigniew Tokarski	3216.57US02	8487

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EXAMINER

NOTE, JANIS L

ART UNIT	PAPER NUMBER
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1756

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,039

Applicant(s)

TOKARSKI ET AL.

Examiner

Janis L. Dote

Art Unit

1756

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1756

1. The examiner acknowledges the amendments to claims 8, 17, and 25 and the cancellation of claims 18-21 set forth in the amendment filed on Nov. 16, 2005. Claims 1-17 and 22-25 are pending.

The "Amendment to the specification" section and the amended abstract filed in the amendment on Nov. 16, 2005, have been entered.

2. The amended abstract filed on Jun. 14, 2005, did not comply with 37 CFR 1.121 for the reasons discussed in the Notice of Non-compliant amendment mailed on Jul. 5, 2005. The "Amendment to the specification" filed on Jul. 27, 2005, did not comply with 37 CFR 1.121 for the reasons discussed in the Notice of Non-compliant amendment mailed on Oct. 12, 2005. Accordingly, the amended abstract filed on Jun. 14, 2005, and the "Amendment to the specification" filed on Jul. 27, 2005, were not entered.

In addition, the Notice of Non-compliant amendment mailed on Oct. 12, 2005, requested that applicants resubmit the "Amendment to the claims" section and remarks filed on Jun. 14, 2005, because the copies filed on Jun. 14, 2005, were not legible. In response to that request, applicants filed legible copies of the "Amendment to the claims" section and remarks on Nov. 16, 2005, which were entered.

Art Unit: 1756

3. Applicants' election without traverse of the invention of Group I, claims 1-17 and 22-25, in the reply filed on Nov. 16, 2005, is acknowledged.

4. Applicants' claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-17 and 22-25 of this application. Provisional application 60/483,726 (Application'726) does not provide an adequate written description for the subject matter recited in the instant claims for the reasons discussed in the office action mailed on Mar. 14, 2005, paragraph 5, which are incorporated herein by reference. Accordingly, the subject matter recited in instant claims 1-17 and 22-25 is accorded benefit only of the filing date, Jan 16, 2004, of the instant application.

5. The objection to the abstract set forth in the office action mailed on Mar. 14, 2005, paragraph 6, has been withdrawn in response to the replacement abstract filed on Nov. 16, 2005.

The objections to the specification set forth in the office action mailed on Mar. 14, 2005, paragraph 8, have been withdrawn in response to the amended paragraphs beginning at page 2,

Art Unit: 1756

line 23, and page 3, line 16, of the specification, filed on Nov. 16, 2005.

The rejection of claims 8, 17, and 25 under 35 U.S.C. 112, second paragraph, set forth in the office action mailed on Mar. 14, 2005, paragraph 10, with respect to the limitation that the R groups can be "a bond," has been withdrawn in response to the amendments to claims 8, 17, and 25 set forth in the amendment filed on Nov. 16, 2005.

The provisional rejection of claims 1-17 and 22-25 under 35 U.S.C. 103(a) as being obvious over copending Application No. 10/663,971 (Application'971) set forth in the office action mailed on Mar. 14, 2005, paragraph 13, has been withdrawn because the Application'971 is not prior art under 35 U.S.C. 103(c). Applicants' representative has shown that the Application'971 and the instantly claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See the response filed on Nov. 16, 2005, page 15, lines 19-21, which states that "[a]pplicants submit that, at the time the invention of the present application, the present application and the '971 application were subject to an obligation of assignment to the same person."

Art Unit: 1756

6. The disclosure is objected to because of the following informalities:

(1) The specification discloses that when Z is $-(CH_2)_m-$ where m is an integer between 1 and 20, inclusive, one or more of the methylene groups can be replaced by N, C, B, P, or a "CR₇" group. See the specification, page 3, lines 7-12, page 8, lines 21-26, and page 22, line 4-9. However, it is not clear how a methylene group, which is divalent, can be replaced with groups that are not divalent.

(2) The specification further discloses that when Z is $-(CH_2)_m-$ where m is an integer between 1 and 20, inclusive, one or more of the methylene groups can be replaced by a NR₆ group, a "CR₇" group, or a CR₈R₉ group, where the R groups can be a bond. See the specification, page 3, lines 7-12, page 8, lines 21-26, and page 22, line 4-9. However, it is not clear to what the R groups in the groups are bonded.

(3) The specification also discloses that when Z is $-(CH_2)_m-$ where m is an integer between 1 and 20, inclusive, one or more of the methylene groups can be replaced by a NR₆ group, a "CR₇" or a CR₈R₉ group, where the R groups can be a part of a ring group. See the specification, page 3, lines 7-12, page 8, lines 21-26, and page 22, line 4-9. However, it is not clear

Art Unit: 1756

what is meant by the term "part of a ring group." The specification does not define said group.

(4) The use of trademarks, e.g., "Tinuvin" [sic: TINUVIN] at page 14, lines 8-10, has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. This example is not exhaustive. Applicants should review the entire specification for compliance.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Appropriate correction is required.

Applicants' arguments filed on Nov. 16, 2005, regarding the objections in items (1), (3), and (4) have been fully considered but they are not persuasive.

(1) Applicants assert that "one of ordinary skill in the art would recognize that the substituted group would be inserted in the methylene chain in such a way as to provide the appropriate number of bonds to each group. Thus, as long as the group is at least double valent, the remaining portions of the group can be appropriately substituted based on the liberal

Art Unit: 1756

substitution defined in the specification. For example, two adjacent methylene groups are replaced by a nitrogen atom double bonded to a carbon atom."

Applicants' assertion is merely attorney argument that is not supported by any objective evidence on the present record. The instant specification merely discloses that one of the methylene groups in the group $-(CH_2)_n-$ can be replaced by N, C, B, P, or a "CR₇" group. Given the plain language of the objected disclosure in the instant specification, a person having ordinary skill in the art would conclude that the disclosure of the replacement of the divalent methylene group with N, C, B, P, or a "CR₇" group was in error. A person having ordinary skill in the art would not have known what is meant by the disclosure of replacing a $-CH_2-$ with the non-divalent groups N, C, B, P, or a "CR₇" group. Applicants are "required to make clear and precise the terms that are used to define the invention whereby the metes and bounds of the claimed invention can be ascertained." MPEP 2173.05(a)I (8th edition, Rev. 3, Aug. 2005).

(3) Applicants assert that "one of ordinary skill in the art would understand that term 'part of a ring group' refers to an atom or group that is bonded to other atoms or groups in a ring system."

Art Unit: 1756

Applicants' assertion is merely attorney argument that is not supported by any objective evidence on the present record. "The meaning of every term used in a claim should be apparent from the prior art or from the specification . . . at the time the application is filed. Applicants need not confine themselves to the terminology used in the prior art, but are required to make clear and precise the terms that are used to define the invention whereby the metes and bounds of the claimed invention can be ascertained." MPEP 2173.05(a)I (8th edition, Rev. 3, Aug. 2005). The instant specification does not define the term "part of a ring group." Nor does the instant specification provide any examples of the term. Accordingly, the objection stands.

(4) Applicants assert that the amendment to the specification filed on Nov. 16, 2005, overcomes the objection. However, for the reasons discussed in the objection in item (4) above, the amendment did not capitalize all of the trademarks disclosed in the instant specification. Accordingly, the objection stands.

The examiner notes that applicants' response filed on Nov. 16, 2005, did not address the objection set forth in item (2) above.

Art Unit: 1756

7. The following is a quotation of the second paragraph of 35

U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-17 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Instant claims 1, 9, and 22 are indefinite in the phrase "R₁, R₂, R₃, and R₄ comprise, each independently . . . a part of a ring group" because it is not clear what is meant by the term "a part of a ring group." The instant specification does not define said group.

Instant claims 8, 17, and 25 are indefinite in the phrase "Z has the formula -(CH₂)_m- where m is an integer between 1 and 20, inclusive, and one or more of the methylene groups is optionally replaced by a . . . N, C, B, P, . . . a CR₇ . . ." because it is not clear how a methylene group, which is divalent, can be replaced with groups that are not divalent.

Instant claims 8, 17, and 25 are further indefinite in the phrase "Z has the formula -(CH₂)_m- where m is an integer between 1 and 20, inclusive, and one or more of the methylene groups is

Art Unit: 1756

optionally replaced by a . . . an NR₆ group, a CR₇ or a CR₈R₉ group" where the R groups can be "a part of a ring group" because it is not clear what is meant by the term "a part of a ring group." The instant specification does not define said group.

Applicants' arguments filed on Nov. 16, 2005, have been fully considered but they are not persuasive for the reasons discussed in paragraph 6, items (1) and (3) above.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1756

10. The following obviousness-type double patenting rejections are provisional because the conflicting claims have not in fact been patented.

11. Claims 1-6, 8-14, 16, 17, and 22-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 and 27-30, as filed on Dec. 14, 2005, of copending Application No. 10/663,971 (Application'971).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed subject matter recited in Application'971 renders obvious the subject matter recited in the instant claims.

Reference claim 10, which depends from reference claim 1, recites an organophotoreceptor comprising a photoconductive element and an electrically conductive substrate, where the photoconductive element comprises a charge generation material and a charge transport compound represented by either the third or fourth formula recited in reference claim 10. Reference claim 11, which depends from reference claim 1, requires that the photoconductive element further comprise an electron transport compound, which meets the second charge transport

Art Unit: 1756

limitation recited in instant claims 2 and 3. Reference claim 16, which depends from reference claim 13, recites an electrophotographic imaging apparatus comprising a light imaging component and an organophotoreceptor comprising a photoconductive element and an electrically conductive substrate, where the photoconductive element comprises a charge generation material and a charge transport compound represented by either the third or forth formula recite in reference claim 16. Reference claim 19, which depends from reference claim 13, requires that the apparatus further comprise liquid toner disperser, which meets the toner disperser component recited in instant claim 10. Reference claim 17, which depends from reference claim 13, requires that the photoconductive element further comprise an electron transport compound, which meets the second charge transport limitation recited in instant claims 11 and 12. Reference claim 30, which depends from reference claim 27, recites a charge transport compound represented by the third or fourth formula recited in reference claim 30.

The charge transport compounds of the third and fourth formulas comprise two azine groups. The compounds meet the compositional limitations of the formula recited in instant claims 1, 4-6, 8, 9, 13, 14, 16, 17, and 22-25, except for the

Art Unit: 1756

groups Y and Y' being a (disubstituted)methylene group as recited in the instant claims. The compounds of the third and fourth formulas are represented by the formula recited in the instant claims when the groups X and X' are tri-substituted benzene groups, the R groups are ethyl, and the linking group Z is of the formula $-(CH_2)_m-$ recited in instant claims 8, 17, and 25, where one or more of the methylene groups is replaced by an O, S, a heterocyclic group, a phenylene group, or CR_8R_9 group where R_8 is hydrogen and R_9 is hydroxyl. In the compounds represented by the third or fourth formulas, the groups Y and Y' of the formula recited in the instant claims are represented by the group 9-ethyl-3-carbazolyl-CH=. The methine carbon ($-CH=$) is not disubstituted as required in the instant claims.

However, the compounds of the third and fourth formulas represent the formula recited in reference claims 1, 13, and 27, from which claims 10, 16, and 30 depend, respectively. Reference claims 1, 13, and 27 recite that the carbon in the methine group is substituted with the groups Y and R_1 , i.e., $=C(R)(Y)$. The group Y is a (N,N-disubstituted)arylamine, e.g., 9-ethyl-3-carbazolyl, as shown in the compounds of the third and fourth formulas recited in reference claims 10, 16, and 30. In addition to hydrogen, the group R_1 can equally be an alkyl group, an alkaryl group or an aryl group. The groups Y and R_1 in

Art Unit: 1756

Application'971 meet the limitation "(disubstituted)methylene group" recited in instant claims 1, 9, and 22 when the group Y is 9-ethyl-3-carbazolyl and group R₁ is an alkyl group, an alkaryl group or an aryl group. The groups Y and R₁ meet the limitation "(diaromatic)methylene group" recited in instant claims 6 and 14, and the limitation "diarylmethylene group" recited in instant claims 5, 13, and 24, when the group Y is 9-ethyl-3-carbazolyl and the group R₁ is an alkaryl group or an aryl group. The group 9-ethyl-3-carbazolyl meets the term "aryl" in the term "diarylmethylene group" recited in instant claims 5, 13, and 24, because it is a substituted phenyl group. See the instant specification at page 10, lines 13-17, which discloses that "the term group indicates that the generically recited chemical entity (e.g. . . . diarylmethylene group) may have any substituent thereon which is consistent with the bond structure of that group."

It would have been obvious for a person having ordinary skill in the art, in view of the subject matter recited in the claims of Application'971, to replace the hydrogen atom attached to the methine carbon in the compound represented by the third or fourth formula recited in reference claims 10, 16, and 30 with an alkyl, an alkaryl group, or an aryl group, such that the resultant compounds are within the compositional limitations of

Art Unit: 1756

the formula recited in the instant claims, and to use the resultant compound as the charge transport material in the organophotoreceptor and in the imaging apparatus recited in the claims of Application'971. That person would have had a reasonable expectation of successfully obtaining a charge transport compound that is capable of transporting charges in an organophotoreceptor, and an organophotoreceptor and an electrophotographic imaging apparatus that are capable of being used in an electrophotographic process to provide toned images.

12. Claims 7 and 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 and 27-30, as filed on Dec. 14, 2005, of copending Application'971 in view of Diamond, Handbook of Imaging Materials, pp. 395-396.

The subject matter recited in the claims of Application'971 renders obvious the organophotoreceptor and the electrophotographic imaging apparatus as described in paragraph 11 above, which is incorporated herein by reference. In addition, reference claims 12 and 18, which depend from reference claims 1 and 13, respectively, further require that the photoconductive layer in the organophotoreceptor further comprise a binder.

Art Unit: 1756

The reference claims of Application'971 do not recite that the photoconductive element comprises a charge generation layer comprising the charge generation material and a polymeric binder and a charge transport layer comprising the charge transport compound and a polymeric binder as recited in instant claim 7. Nor do the claims recite that the organophotoreceptor comprises a flexible belt or a drum to support the electrically conductive substrate as recited in instant claim 15.

However, multi-layered photoconductive elements and the use of flexible belt or drum in organophotoreceptors are well known in the electrophotographic arts. Diamond discloses that photoreceptor fabrication involves the sequential application of one or more layers. Page 395, lines 10-11. Figure 9.7 in Diamond illustrates a "typical photoreceptor cross section." The photoreceptor in Figure 9.7 comprises a charge generation layer and a charge transport layer. Diamond discloses that the photoconductive layer can equally be a single layer that functions as both a charge generation and a charge transport layer. Page 395, lines 25-27. Diamond further discloses that the support of the photoreceptor can be a metal cylinder, i.e. a drum, or a flexible belt. Page 395, lines 12-13, and page 396, lines 4-9.

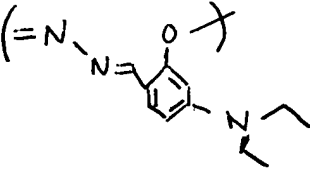
Art Unit: 1756

It would have been obvious for a person having ordinary skill in the art, in view of teachings in Diamond and the subject matter recited in the reference claims of Application'971, to make and use a photoconductive element comprising a charge generation layer comprising the charge generation material and a polymeric binder and a charge transport layer comprising the charge transport compound and a polymeric binder as recited in instant claim 7, and to use a metal cylinder or a flexible belt to support the electrically conductive substrate in the organophotoreceptor rendered obvious over the claimed subject matter recited in Application'971. That person would have had a reasonable expectation of successfully obtaining an organophotoreceptor and an electrophotographic imaging apparatus that are capable of being used in an electrophotographic process to produce toned images.

13. Applicants' arguments filed on Nov. 16, 2005, regarding the rejections in paragraphs 11 and 12 above have been fully considered but they are not persuasive.

Applicants assert that the '971 Application does not disclose or suggest an aromatic X and X' group bonded to an NR₁R₂ and NR₃R₄ group, respectively.

Art. Unit: 1756

Applicants' assertion is not persuasive. As discussed in paragraph 11 above, the azine compounds of the third and fourth formulas in reference claims 10, 16, and 30 of Application'971 are represented by the formula recited in the instant claims when the groups X and X' are tri-substituted benzene groups and the R₁ and R₂ groups are ethyl. The tri-substituted benzene groups in the structure of the third and fourth formulas of Application'971, i.e., , are aromatic groups,

which thereby meet the X and X' requirement of the formula recited in the instant claims. Instant claims 1, 9, and 22 recite that the R₁ and R₂ groups can be an alkyl group, which encompasses the ethyl groups bonded to the tertiary nitrogen atoms bonded to the tri-substituted benzene moieties in the azine compounds of the third and fourth formulas in reference claims 10, 16, and 30 of Application'971.

Accordingly, for the reasons discussed above and in the rejections set forth in paragraphs 11 and 12 above, the rejections of claims 1-17 and 22-25 stand.

14. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are

Art Unit: 1756

reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janis L. Dote whose telephone number is (571) 272-1382. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Mark Huff, can be reached on (571) 272-1385. The central fax phone number is (571) 273-8300.

Any inquiry regarding papers not received regarding this communication or earlier communications should be directed to Supervisory Application Examiner Ms. Claudia Sullivan, whose telephone number is (571) 272-1052.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLD

Jan. 25, 2006

Janis L. Dote
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PRIMARY EXAMINER
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